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community over the individual—the restraining influence of public opinion and of religion is greater. But even during the years of trouble, the years from 1885 till 1890, when, in the words of the Burmese proverb, 'the forest was on fire and the wild-cat slapped his arm,' there were certain peculiarities about the criminals that differentiated them from those of Europe. You would hear of a terrible crime, a village attacked at night by brigands, a large robbery of property, one or two villagers killed, and an old woman tortured for her treasure, and you would picture the perpetrators as hardened, brutal criminals, lost to all sense of humanity, tigers in human shape; and when you came to arrest them—if by good luck you did so—you would find yourself quite mistaken. One, perhaps, or two of the ringleaders might be such as I have described, but the others would be far different. They would be boys or young men led away by the idea of a frolic, allured by the romance of being a free-lance for a night, very sorry now, and ready to confess and do all in their power to atone for their misdeeds. Nothing, I think, was more striking than the universal confession of criminals on their arrest. Even now, despite the spread of lawyers and notions of law, in country districts accused men always confess, sometimes even they surrender themselves.[1] I have known many such cases. Here is one that happened to myself only the other day.

A man was arrested in another jurisdiction for cattle theft; he was tried there and sentenced to

[1] This was written in 1896. In 1902 it is very different. The increase of all forms of perjury and false evidence is universal.

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672 two years' rigorous imprisonment. Shortly afterwards it was discovered that he was suspected of being concerned in a robbery in my jurisdiction, committed before his arrest. He was therefore transferred to the gaol near my court, and I inquired into the case, and committed him and four others for trial before the sessions judge for the robbery, which he admitted.

Now, it so happened that immediately after I had passed orders in the case I was obliged to go out hurriedly into camp, leaving the necessary warrants to be signed in my absence by my junior magistrate, and a mistake occurred by which the committal-warrant was only made out for the four. The other man being already under sentence for two years, it was not considered necessary to make out a remand-warrant for him. But, as it happened, he had appealed from his former sentence and he was acquitted, so a warrant of release arrived at the gaol, and, in absence of any other warrant, he was at once released.

Of course, on the mistake being discovered a fresh warrant was issued, and mounted police were sent over the country in search of him, without avail; he could not be found. But some four days afterwards, in the late afternoon, as I was sitting in my house, just returned from court, my servant told me a man wanted to see me. He was shown up into the veranda, and, lo! it was the very man I wanted. He had heard, he explained, that I wanted him, and had come to see me. I reminded him he was committed to stand his trial for dacoity, that was why I wanted him. He said that he

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thought all that was over, as he was released; but I explained to him that the release only applied to the theft case. And then we walked over half a mile to court, I in front and he behind, across the wide plain, and he surrendered to the guard. He was tried and acquitted on this charge also. Not, as the sessions judge said later, that he had any doubt that my friend and the others were the right men, but because he considered some of the evidence unsatisfactory, and because the original confession was withdrawn. So he was released again, and went hence a free man.

But think of him surrendering himself! He knew he had committed the dacoity with which he was charged: he himself had admitted it to begin with, and again admitted it freely when he knew he was safe from further trial. He knew he was liable to very heavy punishment, and yet he surrendered because he understood that I wanted him. I confess that I do not understand it at all, for this is no solitary instance. The circumstances, truly, were curious, but the spirit in which the man acted was usual enough. I have had dacoit leaders with prices on their heads walk into my camp. It was a common experience with many officers. The Burmans often act as children do. Their crimes are the violent, thoughtless crimes of children; they are as little depraved by crime as children are. Who are more criminal than English boys? and yet they grow up decent, law-abiding men. Almost the only confirmed criminals have been made so by punishment, by that punishment which some consider is intended to uplift them, but which never does aught but degrade them.

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672 Instead of cleansing the garment, it tears it, and renders it useless for this life.

It is a very difficult question, this of crime and punishment. I have not written all this because I have any suggestion to make to improve it. I have not written it because I think that the laws of Manu, which obtained under the Burmese kings, and their methods of punishment, were any improvement on ours. On the contrary, I think they were much worse. Their laws and their methods of enforcing the law were those of a very young people. But, notwithstanding this, there was a spirit in their laws different from and superior to ours.

181 I have been trying to see into the soul of this people whom I love so well, and nothing has struck me more than the way they regard crime and punishment; nothing has seemed to me more worthy of note than their ideas of the meaning and end of punishment, of its scope and its limits. It is so very different from ours. As in our religion, so in our laws: we believe in mercy at one time and in vengeance at another. We believe in vicarious punishment and vicarious salvation; they believe in absolute justice—always the same, eternal and unchangeable as the laws of the stars. We purposely make punishment degrading; they think it should be elevating, that in its purifying power lies its sole use and justification. We believe in tearing a soiled garment; they think it ought to be washed.

Surely these are great differences, surely thoughts like these, engraven in the hearts of a young people, will lead, in the great and glorious future that lies before them, to a conception of justice, to a method

Nats' powers for good include protecting the village from dacoit attacks but does not extend to modern warfare. When the Japanese armies were slicing up through Tenasserim in 1941, the elders of Maung Maung Thein's village prayed for nat protection against the invaders. The nats replied "Dear Villagers we ourselves are wearing raised longyis in this crisis (ready to run)." This is a Rangoon town joke told among the sophisticated collegiates at the University. Not so well defined, but still sensed is a growing distrust of the powers of nats to combat modern evils.

The nats can best be visualized as supernatural despots each with his province (the home, village, sea, babies) and each exacting tribute of periodic or constant attention in the form of flowers or food, red and white cloth stripes, and an altar which may have the image of the nat carved in wood (or moulded in modern plasticene). Banyan trees with their multiple, snake-like trunks, are the most common places of abode. When disaster in the form of sickness or other ill fortune strikes, the nats are appeased with offerings immediately. The SAY SAYA will frequently check with the family of his patient to make sure this has been done. In Rangoon and elsewhere, business men whose fortunes have been good are the main supporters of the nat festivals which are given for the entertainment of all the nats once a year in October, for a seven day period. NAT KADAW (nat-wives) are the mediums who contact the nats by becoming possessed by them at this festival and other special occasions (for a single nat) throughout the year. These are married women or more rarely homosexuals who dance, answer questions and give opinions when possessed.

Punishment for offense against the nats is first shown by accidents or sudden illnesses like paralysis meted out to the offender. If the offender continues the village as a whole will gradually be afflicted. For example, when a drunkard offends the nats with blasphemous language evil falls on the entire village. Villagers led by the elders and a prominent NAT-KADAW go in a body to the major banyan tree shrine to have an understanding with the offended nats. Offerings are given and attention of the nats called to the woes of

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776 of the villagers. The head-nat, the guardian of the village, replies
753 with accusations that "the whole village has forgotten me", boasts of
688 his powers to punish and is finally mollified. In Rangoon there are
672 professional nat-givers who parade the streets with a cart bearing the
782 image of "the conquerer of the salty waters" (special nat of entrepre-
[463] neurs). For a few annas he will make offerings to the nat and relcive the busy townspeople of this task.

776 The arrangement is a mutual one where the people enjoy freedom
782 from oppressions in return for certain concessions. This phenomenon closely parallels the traditional relationship between the rulers and the ruled in Burma. In a real sense the nat concept serves the function of allowing the Burmese a sense of control over catastrophic forces which do not fall into any other system (as secular, political,
[177] personal relationships, cosmology.). It is this system of controls that the western scientific system most immediately competes with. The administrative and entrepreneur class of Burmese especially in Rangoon say they "Do not believe" in nats. But it is usual for most individuals no matter what their western background to apply to nats in cases of ill fortune "just in case".

775 THAYEH (Ghosts) generally are a group of supernatural spirits closely related to nats in their origins but with a different set of properties. These are "recently" deceased individuals whose crimes and sins while on earth or manner of death condemn them to an eternity of wandering and mischief-making. Actually, each person becomes a ghost at death but is ordinarily released from earth at the moment of the interment of the corpse for judgement in heaven. Those who die of
[761] "raw death" become ghosts. These include: death in childbirth, by wild animals (especially tigers), instant deaths by dahs as in warfare, or by hanging. In Maung Maung Than's village a prominent ghost is U Me Gyi (Mr. Blacky) a very sinful fellow who lived 50 or 60 years ago in the village. His complexion is quite black and horribly distorted. He inhabits a banyan tree and specializes in causing infant illness. Offerings of rice at the tree pacifies him. Ghosts are forces for evil only - evil of the more irritating and less important kind.
751 Older people wear red and white coloured strings about their necks as a protection against ghost evils. It is very common to wear a LET-PWET

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792 881 the monastery. It is a day of excited celebration. Recalling the Great Renunciation, when Gautama left the royal court in his quest for truth, the boy, attired in princely robes, is feasted by his family and friends until the moment when he casts his finery aside to don the yellow robe of the Order.[21]

[301] 562 881 779* 871 Girls experience a similar ceremonial initiation, when (to the accompaniment of vigorous music) their ears are pierced to take the ear-rings which are the sign of womanhood. They cannot attend the monastic schools with the boys, but other means are found for their education, and they certainly do not lag behind their brothers in intelligence, character or Buddhist zeal. Mrs Hla Oung recounts the story of a little maid taken to the monastery to be reminded of the five precepts, after some childish misdemeanour. (The monk was benign. "There was the faintest suspicion of a smile on his calm face, to show, I suppose, that her backsliding was not to be taken as a defection from the faith.") The 'charity of learning' seems, then, to be shared by girls as well as boys. The status, freedom and privileges of Burmese women have already been remarked and Mrs Hla Oung affirms vigorously that "the life of the Burmese woman is bound up in her religion. Buddhism has formed the character of the Burmese woman.... There are few Burmese women, even in the villages, who are unable to read and write," and the Buddhist scriptures form the ground work of their studies.[22]

792 871 178 Not only are the monks numerous, but they are dispersed throughout the country. Every village has at least one monastery, and sometimes more. The educational influence of the Order has been, therefore, both organised and ubiquitous. In more recent times this influence has been challenged by new conditions. Government and mission schools have intervened, and the modern Burmese boy may only remain in the monastery as a novice for a brief, token period. But during the centuries which shaped the Burmese character and outlook, the monks as educators had no serious rivals.

792 [757] 737 672 Nor has their ministry to the community been confined to education. Herbs and potions from the monastery are held in high esteem, especially in Upper Burma.[23] The monastery also serves as alms-house and asylum.

[21] For a good description of this ceremony v. Ananda Metteya, quoted by G. Appleton, *Buddhism in Burma*, pp. 22–23.

[22] Ma M. Hla Oung, "The Women of Burma," *Buddhism*, Vol. I, No. 1, p. 61 (September, 1903, Rangoon); cf. a later series by Daw Mya Sein, "Kin Sein Hla," *Burma Today*, published by the Burma Government in India, 1944, in which the influence of the Monastery is not so strongly emphasised.

[23] "Theirs is faith cure rather than medicine," writes a Burmese correspondent, who cites cures from snake-bite, leprosy and hydrophobia.

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Old men will retire to the monastery to end their days there, and younger men, in poverty or other distress, will flee the world for a time. The hospitality of the monks has sometimes been more charitable than discriminate, a circumstances which has brought some monasteries into disrepute, for these temporary inhabitants are allowed to wear the yellow robe, and some are criminals, sheltering from justice. Father Sangermano reports the rescue of prisoners condemned to death. "In thus saving the lives of criminals, (the monks) believe that, as their law forbids them to kill, it must be meritorious to preserve the lives of others."[34]

The monastery is the social centre of the village. Buddhism in Burma is gaily attired, a religion of festival. Frequently there will be an open-air performance in the moonlight, when a birth-story of the Buddha is dramatized. All this spirited, colourful life gathers around the monastery.

But perhaps the Order's most valuable service to the community is the function fulfilled by the monk as *counsellor*. A group of villagers may gather for a special instruction, others may attend when the monks assemble for devotions, but the monastery is not regarded as a preaching centre or as a place of public worship. In modern times, crowds have flocked to hear the Monyin Sayadaw. Generally, however, the approach in this respect is individual. It is as the individual adviser of each villager that the monk's influence is most strongly felt.

In many and tangible ways, therefore, the monastery serves the community, but it is probable that the villager himself reveres the monk more for services which are intangible and may not appear so valuable to sceptical observers. Early in the morning, the monk, attended by *koyins*, will go the round of the faithful, receiving their offerings of rice in his begging bowl.[35] For the monk himself it is an exercise in humility, for the villager it is one of the chief means of increasing that *kutho* or worthiness which ensures him happiness in this life and the next.[36]

Most of all, however, it is those very aspects of the monk's vocation which distinguish him from the rest of the community, setting him apart, for which the monk is chiefly esteemed. It is because the greater part of his life is spent in spiritual exercises which the villagers do *not* share, that they value him most. The monastery stands for a Way of utter renun-

[34] *The Burmese Empire*, 3d. Edition, ed. J. Jardine, (London, 1895), chap. xv, p. 122.

[35] Thus *bhikku or bhikpu*, usually translated monk, means, literally, mendicant. Strictly speaking, a *bhikku* is not a monk; cf. Rhys Davids, *Dialogues of the Buddha*, Part II (S.B.B.), p. 81, footnote.

[36] *Kutho* is frequently translated 'merit.' But 'worthiness' is more accurate.

30: Maung Htin Aung E-4 (no date) 1953 AP1 Burma
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The impact of the English legal system introduced into the country after the annexation of 1886 shook Burmese customary law to its very foundations, just as Burmese society itself rocked with the shock of the impact. But Burmese society soon regained its balance, and so did Burmese customary law. The British, by statute, superseded the Burmese customary law of contract and tort with their own English common law, but recognized the Burmese customary law regarding marriage and divorce, adoption, inheritance, and religious usage, and these branches of the customary law remain valid today. Thus, whereas in India the legislature now struggles against strong public opposition to pass new statutes introducing changes in the Hindu law of marriage and inheritance so as to adjust Hindu law to new developments in Hindu society, the Burmese, after their hard-won independence, have not found it necessary to modify by statute or to codify their customary law. With regard to the English law of contract and tort that was introduced into the country after the British annexation, the Burmese did not find the new law strange and mysterious, for the fundamental principles of Burmese law of contract and tort had certain similarities with the fundamental principles of English common law. Thus the principles of specific performance, of damages, of a period of limitation, and a remoteness of damage were known to the Burmese law also. Even the English legal plea of "Act of God" for exemption from liability has its Burmese counterpart in the plea of "ill fortune." The following rules of law relating to ferries will illustrate this aspect of Burmese law:

> If a man, for the sake of hire, becomes a ferryman, let him follow these rules. He shall carefully consider and take only the correct fare. If he is careless, or jocular, or immodest, and as a result, property of a passenger is spilled or damaged, let him make good the loss to the owner. But if he crosses with proper care and proper behaviour, and property be lost or damaged, let him blame ill fortune, and he shall not be liable. Women with child, monks, and sick persons shall be ferried across, even if they have no money to pay as fare.

671 his bedside, the physician shall be entitled to his fee if he has
759 reached at least the doorway of the sick person's house. In the same
693 way, if a suit is withdrawn or settled, or the judge does not find it necessary to call upon the pleader to argue, the pleader shall be entitled to his fee if he has spoken even a few words, or if he has just pulled up the sleeve of his gown in a gesture of speech. If a client wishes to call in another physician, he shall pay the full fees to the first physician, and shall also offer him a cup of water in token of friendship. If a client wishes to engage another pleader, he shall pay the full fee to the first pleader.

671 The following rules regarding void sales and purchases will
432 further illustrate the essential similarity of Burmese law and the English law of contract:

> There are four cases when a sale or a purchase is void: (i) if the price fixed is below its value; by value it is meant market value at the time of the sale, and even a ruby worth a kingdom before may be sold for one-eighth of a basket of rice, if that is the prevailing market value of rubies; (ii) if the buyer is aware that the ownership of the property is being disputed; (iii) if the whereabouts of the property are not known; and (iv) if the owner of the property is in confinement or under duress.

672 Just as in the English law, under the Burmese law a per-
683 son was responsible for any injury which was the foreseeable consequence of his acts. Thus, it was a rule of law that if a person induced another person to accompany him to a place full of perils, and the latter suffered injury, the former was to pay damages to the full amount of the injury; however, if the second person was aware of the dangerous nature of the place, the damages payable were only half the amount of compensation for the injury. Under the same principle, if a host entertained his guest so well that the latter became intoxicated, the host owed a duty in law to see that the guest reached his home safely; if the guest should be allowed to go home unattended, and if he should die or suffer injury on the way through illness, exposure, snake-bite, attack by robbers or by wild beasts, the host was liable to pay full compensation. The

principle of contributory negligence was also known to Burmese law, and the following rules of law regarding "travelling at night with due caution" will serve as an illustration:

> If there be occasion for a person at night to go about the city or the town, or the village, he shall go only with a lantern, for if he goes about without a lantern and is stopped, or hindered, or attacked, he shall not be entitled to damages. If, however, he is going about in search of a doctor, and if he shouts out this fact in the darkness, he shall be entitled to full compensation from the offender who stops or strikes him, even though he carries no lantern. In the same way, if a young woman goes about at night beyond the usual hours when people go about, and if she wears no kerchief on her breast, and if her modesty is outraged, she shall not be entitled to any damages.

The unity of Burmese society has always been the family, but unlike the rigidly knit Roman family or the Hindu joint family, it easily disintegrates. A Burmese family is loosely knit by ties of blood, and sometimes of marriage, and thus it usually consists of the father, the mother, and their unmarried sons and daughters. The sons however can leave the family even before marriage on attaining the age of puberty (sixteen years of age), and the daughters on attaining the age of majority, but sons and daughters of course usually leave the family only on marriage. Sometimes sons and daughters decide to remain in the family even after marriage, at least for some time. The head of the family is the father, and on his death, the mother succeeds to the headship of the family, as in Burmese law the husband and wife are heirs to each other. The head of the Burmese family exercises general control over the family, but unlike the heads of the Roman and Hindu families, he performs no religious duties. He or she has the right to betroth his or her daughter under the age of majority to a male of his or her choice, but the right is subject to the daughter's right of repudiating the betrothal, either by refusing to marry the man chosen by her parent, or by compelling the parent to recognize her betrothal to the man of her own choice.